IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/05/2002

CORAM

THE HONOURABLE MR. JUSTICE V. KANAGARAJ

Wp. No. 2901 of 1999 and Wp.No. 12065 of 2000
and
WMP No. 4153 of 1999

S. Mallikarjuna Rao
Chief Security Officer (Retd.)
Neyveli Lignite Corporation
Neyveli. .. Petitioner

-Vs-

1.The Chairman and the
Managing Director,
Neyveli Lignite Corporation
Neyveli.
2.The Director (Personnel)
Neyveli Lignite Corporation,
Neyveli. .. Respondents

Petitions filed under Article 226 of Constitution of India to issue a
Writ of Certiorari as stated therein.

For Petitioner : Mr. S. Jayaraman

For Respondents : Mr. N.A.K. Sarma

:COMMON ORDER
Both the above writ petitions have been filed by one and the same petitioner on one and the same subject matter pertaining to the disciplinary proceedings initiated against the petitioner and ended with the punishment of stoppage of two increments with cumulative effect from 1.1.1994 onwards as per the order dated 7.1.1998 passed by the second respondent/ disciplinary authority against which WP No. 2901 of 19 99 had been filed and on appeal preferred before the first respondent/ the appellate authority, he passed an order on 13.1.1999 thereby not only dismissing the appeal but also confirming the order of punishment passed by the disciplinary authority/the second respondent herein against which the other W.P. No. 12065 of 2000 has been filed.

2. Since both the above writ petitions have been filed on one

and the same subject by the same writ petitioner, both have been heard together and this common order is passed.

3. From the similar affidavits filed in support of the writ petitions, it comes to be known that the petitioner joined duty in the Neyveli Lignite Corporation as Chief Security Officer in 1985 which he held till the time of his superannuation as well as when the charge memo was issued on29-6-1995 which was an anti-dated one; that the said charge memo was served on him 4 days after his superannuation i.e.on 5 -7-1995; that the charges were framed for certain misconduct under Clause 18 of the N.L.C. Security Force Regulations; that the charges are (i) while actually supplying 50% of the agreed strength, the contractor used to claim bills for the full strength viz., 30 security supervisors and 300 security guards at the monthly rate of Rs.850/- and 6 25/- respectively and as a Chief Security Officer he allowed the contractor to violate the conditions of the Corporation (ii)that he allowed the Contractor to change his men frequently (iii) that he also admitted certain excess payment to be made to security supervisors for which the recovery from the Contractor is necessary; thus he has been charge sheeted under Rule 18(1)(2)(i),(ii), (iii) of the N.L.C. Security Force Regulations.

4. Further it is stated that not being satisfied with the explanation dated 12-7-1995 denying the charges and explaining the facts in detail, the respondents herein ordered enquiry; that unfortunately some of the relevant documents viz., bills, attendance particulars and basic chits etc. are not produced before the Enquiry Officer, who is in charge of accounts and charges leveled against him; that the enquiry officer was totally biassed; that he found the petitioner guilty and filed his report to that effect; that thereafter, 2nd respondent issued the second show cause notice dated 27-9-1997 i.e. after a lapse of two years from the date of conclusion i.e. on 25-9-1995; that the petitioner submitted his reply dated 14-11-97 wherein it has been mentioned that he was able to see the registered letter only after he returned from U.S.A and sought for the details of the report but the respondents by the communication dated 6.9.97 stated that the petitioner caused a loss of Rs.2,76,075/- and therefore, ordered for recovery of the said sum; that they imposed the punishment of stoppage of two increments with cumulative effect retrospectively from 1-1-94.

5. Aggrieved by the said order an appeal has been preferred in January 1998 before the Appellate Authority/1st respondent and he has dismissed the appeal by his order dated 13.1.99 without considering the specific contention raised by him. Hence, the above writ petitions have been filed.

6. In the common counter affidavit filed on behalf of the respondents, the respondents would submit that even though the relief sought for is against the N.L.C. Limited, it has not been made a party. But on the other hand, the writ petitions have been filed against the respondents, who do not come within the definition of 'State' in terms of Article 12 of the Constitution of India as held by the Division Bench of this Court in W.A.No. 411 of 1995 and therefore, at this score itself the above writ petitions are not maintainable in law.

7. The counter would then state that the charge memo dated 29.6.199 5

was issued to the petitioner containing the following charges.
"1. As per the Contract Agreement dated 24.3.94 signed between M/s. Southern Security Services, Madras and the Chief Security Officer, NLC Limited, the Contractor has to supply 30 Security Supervisors and 3 00 Security Guards at the month rate of wage of Rs.850/- and Rs.625/- respectively. As per the calculations made through scrutiny of the basic records from the Security Units, which utilised the services of these SSS men, it is revealed that the Contractor has supplied on an average
15 Sergeants and 106 Guards for 9/94
14 Sergeants and 109 Guards for 10/94
10 Sergeants and 86 Guards for 11/94
11 Sergeants and 97 Guards for 12/94
8 Sergeants and 78 Guards for 1/95 &
11 Sergeants and 80 Guards for 2/95.

II. While actually supplying only less than half of the agreed strength, the contractor used to claim bills for the full agreed strength and the Chief Security Officer also admitted these bills and passed the bills.
III. The Director (Personnel), in view of the induction of CISF in N.L.C., ordered for reduction of 5 Sergeants and 50 Guards from 1.2.9 5. But the Chief Security Officer reduced only the duty points and went on record to show that men were actually reduced as per the orders of Director (Personnel). In fact, the Chief Security Officer has used this opportunity of reduction proposal to camouflage the less number of men and show on record that the claimed strength actually existed. Further, the contract, itself expired on 31.12.94. In view of this expiry, Director (Personnel) gave his approval for clearance of bills for January and February '95 on 16.2.95. But the Chief Security Officer cleared the bill for January,'95 on 23.1.95 itself on his own by giving false attendance certificate.
IV. Chief Security Officer, while allowing the contractor to violate most of the contract conditions to the advantage of the Contractor and to the disadvantage of the Corporation, also allowed the Contractor to change his men frequently, rotate them between units, extract work from them by ordering them to do 2 or even 3 shifts a day etc. The Chief Security Officer has also admitted that certain excess payments have been made to SSS for which recovery from the Contractor is necessary".

8. Though an explanation was submitted, it was found not satisfactory and hence, the disciplinary authority appointed one R. Ramachandran, Deputy General Manager (Finance) in the Corporation to conduct an enquiry; that the petitioner availed opportunities to cross examine the witnesses of the Corporation numbering six but not a single witness was produced on the part of the petitioner; that on the side of the management 15 documents were also marked as exhibits; that the enquiry officer having conducted the enquiry following the procedures established by law, submitted his report on 26.9.95 holding all the charges proved except charges No.III and IV; that the enquiry officer had also quantified the loss suffered by the Corporation on account of the over payment to the security contractor as Rs.2,76,0 75/- which could be directly attributed to the petitioner's omissions and commissions and hence the notice dated 13.8.1997 was issued calling upon the petitioner to explain in writing as to why the said amount

should not be recovered from him affording 7 days time to furnish the explanation but since no representation/explanation was received, final orders were passed on 6.9.1997 by the second respondent for recovery of the said sum of Rs.2,76,075/- from the dues payable to the petitioner by the Corporation.
9. The common counter affidavit would then state that a provisional notice dated 27.9.1997 proposing the punishment of reduction of increment by two stages in the time scale of pay with cumulative effect was issued in consideration of the fact that he had retired from the service of the Corporation at that time and that he had not been paid wage revision arrears because of the pending disciplinary action against him; that to this notice he sent reply dated 14.11.97 and since the reply was not found satisfactory, the second respondent/ disciplinary authority passed orders awarding punishment of stoppage of two increments with cumulative effect from 1.1.1994; that against the said order of punishment dated 7.1.1998 which is impugned in WP No. 2901 of 1999, the petitioner had filed the appeal dated 29.1.1998 to the designated appellate authority, who had rejected the same in consideration of the appeal vide his detailed order dated 13.1.1999 which is impugned in W.P.No. 12065 of 2000; that they conducted the departmental enquiry in accordance with the rules and the principle of natural justice in a well reasoned manner bringing out the misconduct of the petitioner; that the material available on record clearly established the charges against the petitioner to the extent they were held proved by the enquiry officer in his findings.
10. In the last phase of the counter, the respondents would submit that the petitioner was the designated Chief Security Officer and the Corporation's Security Force Regulations squarely applies to him regardless of the grade of the petitioner whether higher or lower; that it is utterly false to allege that the charge memo is ante-dated which was issued on 29.6.1995 prior to the date of the retirement of the petitioner on 30.6.1995 thus communicating the same; that from and out of the six witnesses examined on the part of the Corporation, they are consistant, corroborated on material points without giving any vent in the cross examination on the contrary; that the findings are perverse since no relevant materials have been taken into consideration is unacceptable and false; that the second respondent/ the disciplinary authority in application of mind and on analysation of the materials placed on record, had arrived at his conclusion; that the appellate authority/ the first respondent herein had also passed his order rejecting the appeal after analysing the grounds urged by the petitioner in detail and assigning valid reasons for rejecting the appeal and therefore, on such and other grounds, the respondents would pray to dismiss the above writ petitions as without merit with costs.

11. During arguments, the learned counsel appearing on behalf of the petitioner besides bringing the facts of the case would submit that Rule 27 of the Standing Order of N.L.C. Employees Conduct Rules provides for the charge memo that is issued under the N.L.C. Security Force Regulations Chapter III of the Standing Orders; that he belongs to E6 category Executive; that these E1,E2 and E3 categories which are concerned with N.L.C. Security Force Regulations and the same does not apply to the case of the petitioner; that he belongs to common executive cadre and therefore, it is not valid.
12. Learned counsel would also cite a judgment reported in B. J.

SHELAT – Vs. - STATE OF GUJARAT AND OTHERS (A.I.R. 1978 S.C. 1109) wherein it is held that " the appointing authority has no jurisdiction to conduct disciplinary proceedings against the Government Servant, who had effectively retired. The question as to whether the disciplinary authority had sufficient grounds for dismissing him does not arise in such a case."

13. The second judgment cited in favour of the petitioner's case is reported in WORKMEN OF ASSAM COMPANY LTD., - Vs.- ASSAM COMPANY LTD. (A.I.R. 1995, S.C. 1853) wherein in the context of Rules 43(b) & 139(a) of the Bihar Pension Rules, the Hon'ble Apex Court has held:-
"... where the departmental proceedings against the employee were quashed by the High Court and the employee subsequently retired from service, a notice by which fresh department proceedings were sought to be initiated and another notice for showing cause as to why his pension should not be withheld and the final order withholding 70% of pension of employee, were liable to be quashed when both the notices were based on misconduct which was more than four years prior to issuance of notices. In such a case, no question of remanding the proceedings under Rule 139 (a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after expiry of four years as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii)".
On such arguments, the learned counsel would pray to allow the writ petitions setting aside the impugned orders passed by the respondents.

14. In reply, the learned counsel appearing on behalf of the respondents would clarify that it is the case of the petitioner that the charge memo was ante-dated as 29.6.1995 but served on the petitioner later than 30.6.95 that was after the date of his retirement. Learned counsel would ascertain that the charge memo had been served on the petitioner a day before his retirement that was on 29.6.1995 itself initiating the departmental disciplinary proceedings; that the punishment awarded to petitioner is in accordance with the Rules of the Corporation and it is legally valid and sustainable; that all the documents have been supplied and all the opportunities have been afforded and having exhausted all his remedies, the petitioner has come forward to give a false version and hence both the above writ petitions become liable only to be dismissed. He would further submit that the judgments cited are not applicable to the facts of the case.

15. Learned counsel for the respondents would further point out that the petitioner was in E6 grade is not true and no such classification is there, the petitioner is covered by the Security Force Regulations of the Corporation. On such arguments, he would pray to dismiss the writ petitions with costs.
16. In consideration of the facts pleaded, having record to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that serious charges have been leveled against the petitioner when he was serving in the capacity as the Chief Security Officer of the N.L.C. Limited; that he connived with the contractor and while actually supplying less than half of the agreed strength, the contractor claimed bills for the full agreed strength and the petitioner as the Chief Security Officer in charge of the same admitted the bills; that he manipulated

the records to show that men were actually reduced as per the orders of the Director(Personnel); that he allowed the contractor to violate most of the conditions of the contract to the advantage of the contractor and disadvantage of the Corporation and the loss suffered by the Corporation has been quantified by the enquiry officer to the extent of Rs.2,76,075/- and hence, conducted the domestic enquiry against the petitioner and the enquiry officer having afforded full opportunity for the petitioner to be heard ultimately arrived at the conclusion finding him guilty of the charges barring a few; that on receipt of the enquiry report issuing the second show cause notice, the disciplinary authority/the second respondent herein has found that the explanation offered on the part of the petitioner is not convincing and therefore, he inflicted the punishment of stoppage of two increments with cumulative effect from 1.1.94 against which the petitioner preferred an appeal before the first respondent and the same had also been dismissed on merit. As against both the orders passed by the second respondent and the first respondent respectively, the petitioner filed both the above writ petitions on certain grounds as stated above.

17. At the outset, it is relevant to note that either the first respondent or the second respondent being individual officers and having passed orders in the disciplinary proceedings on behalf of the N.L.C. Limited, they cannot independently be termed as the 'State' as it is argued on the part of the respondents; that without making the N.L.C. Limited/ the petitioner's employer as a party within the meaning of Article 12 of the Constitution of India no such writ petition filed could sustain or be maintained. Therefore, the arguments of the respondents that without N.L.C. Limited being a party which is only the instrumentality of the 'State', the first and second respondents cannot independently make up the position of the 'State' within the meaning of the said Article and the writ petitions filed against others as in the case in hand is not maintainable. This question having been raised in the counter affidavit by the respondents, no valid reasons have been assigned on the part of the petitioner particularly in the arguments.

18. Even on merits, both the authorities i.e. the disciplinary authority/ the second respondent herein and the appellate authority/ the first respondent herein have passed orders based on the enquiry report and findings rendered by the enquiry officer thereby finding the petitioner guilty of the delinquency charged without deviating from either the law or the procedures established by law. Though this Court cannot act as a second appellate Court sitting on the factual findings arrived at by the statutory authorities such as the respondents herein, even on judicial review, this Court is not able to see any irregularity or infirmity in the orders passed by the respondents in the case of disciplinary proceedings initiated against the petitioner. There is no lack of opportunity either strongly pleaded or established on the part of the petitioner and therefore, this Court has to conclude that there is no violation of principles of natural justice.

19. In short, there is no error apparent on the face of the record nor perversity in approach, particularly, on the part of the enquiry officer and the disciplinary authority so as to cause interference. The manner in which the appellate authority has dealt with the appeal is also fair and adequately adhering the principles governed in such disciplinary

proceedings and therefore, it has to be concluded that a fair enquiry with due opportunity following the procedures established by law has been conducted and decisions have been arrived at by the respondents. Therefore, the interference of this Court sought for to be made into the well considered and merited orders passed by the respondents in the disciplinary proceedings initiated and punishment inflicted on the petitioner including the quantum of punishment do not in any manner call interference of this Court nor necessary in the circumstances of the case.

20. In result,

(i) Both the above writ petitions fail and the same are dismissed.

(ii) No costs.

(iii) Consequently, WMP No. 4153 of 1999 is also dismissed.

Index: Yes
Internet: Yes
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V. KANAGARAJ, J.

To

1. The Chairman and the
Managing Director,
Neyveli Lignite Corporation
Neyveli.
2.The Director (Personnel)
Neyveli Lignite Corporation,
Neyveli.

Order in
WP Nos.2901/1999 and
12065/2000.